TESTIMONY OF BRENDA DONALD, CHIEF OF STAFF
CHILD AND FAMILY SERVICES AGENCY
BEFORE THE COMMITTEE ON HUMAN SERVICES
COUNCIL OF THE DISTRICT OF COLUMBIA

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Good morning Chairwoman Allen and members of the Committee on Human Services. I am Brenda Donald, Chief of Staff for the District of Columbia's Child and Family Services Agency. I am here today to testify in support of the *Standby Guardianship Act of 2001*. The Child and Family Services Agency applauds your efforts to protect the children of the District through recent legislation. We support the purpose of the Standby Guardianship Act and look forward to working with you on refinements to the Bill that we believe will make it more effective in providing for children whose parent dies or otherwise becomes incapacitated.

I would like to take a few minutes to discuss what we see as the goals of Standby Guardianship legislation, how this Bill would affect the children and families of the District, and finally, I will share some perspectives on the legislation in its current form.

Standby guardianship provides a tool for parents to plan ahead for the future rearing of their children in the event of their own disability, illness or death. When Congress passed the *Adoption and Safe Families Act* (ASFA) in 1997, it included a provision encouraging States to enact laws and procedures that permit any parent who is chronically ill or near death to designate a standby guardian for their children without surrendering parental rights. As contemplated in the ASFA, the authority of the standby guardian would take effect upon the death of the parent, the mental incapacity of the parent, or the physical debilitation and consent of the parent. Presently there are over 20 states with some form of Standby Guardianship laws. Standby guardianships are designed for families without extensive assets for whom wills, trusts, and tax strategies are not a realistic means for providing for the future of their minor children.

This Bill is the District's attempt to meet one of the challenges of ASFA by providing a mechanism in which a parent, while able, may designate a person to serve as a guardian in the event of his or her incapacity. The Child and Family Services Agency generally supports this legislation as a means through which parents can make

stable plans for their children – while at the same time not relinquishing any parental rights or responsibilities themselves. The proposed Bill establishes procedures which must be satisfied in designating a standby guardian and provides for court approval of the designation, either at the time the designation is made or alternatively, at the time of death or incapacity. Significantly, the court may only approve the designation if it finds that the appointment of the standby guardian is in the best interest of the children.

Another critical feature of this Bill which the Agency fully supports is that the authority of the standby guardian is effective only upon the disability, incapacity or death of the designator. The goal is not to take away the rights of the child's parents, but rather help provide them with a means by which they can prepare and plan for the future. Furthermore, the Bill adequately ensures that the standby guardian has the necessary authority to meet the child's needs.

Under the backdrop of serving and promoting the best interest of the child, this legislation takes positive steps in that direction. **First**, it creates the opportunity for a seamless custodial transition for

children who have lost their parents to either death or sickness. This seamless transition does two things. It provides the parents with a peace of mind – knowing that their children will be with a person they know, trust and with whom they share common values. One of the greatest fears and stresses of a parent is that of what will happen to their children should they no longer be able to care for them. It also helps to provide the children with a means to a stable and familiar environment should something happen to their parents. All too often, when a parent gets sick or dies, their children are bounced from relative to relative and friend to friend – never finding the stability for which children both need and desire.

Second, from the standpoint of our Agency, this Bill has the potential to reduce the numbers of cases coming into the system. Although it is true that most of our children do not enter the child welfare system due to the death or incapacity of parents, many do so. Passage of this Bill should reduce the number of children who come into the system under those tragic circumstances, as children for whom arrangements were made under this Bill would never have to enter the system. So, while it is important that the individual

appointed standby guardian is appropriate, we support the legislation because it creates a means of providing a stable and permanent environment for a child at a critical time in the child's life. Diverting even one child from unnecessary involvement with the child welfare system through this legislation would render the law a success.

We would, however, like to identify several issues for the Committee's additional consideration. **First**, we believe it is important that our Agency and others who have a need to know have immediate, 24-hour access to a database which identifies those children for whom standby guardians have been approved. This would permit that a child who was referred to the Agency and for whom a standby guardian has been designated to be placed immediately with the standby guardian, as intended by the designator, without subjecting the child to potential additional trauma and without ever opening a neglect case.

Second, we recommend that there be a thorough review of how this legislation treats the non-custodial parent. On one hand, for a custodial parent who is dealing with a potential fatal illness, the

prospect of contacting the other parent who may have been out of the child's life for many years is a stressful and emotionally painful prospect. The mere notion of it may well discourage some parents from filing for a standby guardian with the court – thus defeating the very purpose of the legislation. At the same time, it is important to respect the rights and position of the non-custodial parent.

We also recommend further consideration of three additional issues. **First**, while part of the appeal of the legislation is the fact parents do not have to surrender their rights in designating a standby guardian, we are concerned that there may be confusion as to who can make decisions for the child under certain circumstances. Specifically, Section 7 of the Bill provides that the commencement of the standby guardian's authority does not of itself, divest the parent of his or her rights. This could create confusion in circumstances where there is a conflict between decisions of the standby guardian and the parent. We believe this should be clarified.

Second, in the legislation before us today, the designation may only take place after the designator has been diagnosed with a

serious condition from which he or she may not recover. While this is not uncommon in Standby Guardianship legislation, it does limit which parents are eligible to designate a standby guardian to those who are already inflicted with a serious or potentially serious medical condition. The Committee could consider permitting a parent to designate a standby guardian even before being diagnosed with a chronic condition.

Third, we believe that care must be taken to ensure that a person identified as a standby guardian is appropriate to serve that role. This legislation creates a rebuttable presumption that the designated standby guardian is capable of serving as standby guardian. Because there could be a significant time between the time a designation is made and when it becomes effective, the Committee may wish to identify some criteria by which standby guardians will be evaluated by the court. At the same time, care needs to be taken so that if circumstances arise such that the appointed standby guardian, for whatever reason, can no longer or no longer desires to assume or carry out said responsibility, they have a clear means of relinquishing that responsibility.

In conclusion, I would like to commend the Committee for its diligent work in proposing this legislation as well as the other recent proposals designed to serve and protect the children of the District of Columbia. The Agency will be happy to work with you on any refinements you make to the legislation. Thank you for your time and attention to this matter.